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**UNITED STATES WINS WTO CASE ON INDONESIAN AUTO POLICY**

In response to the draft World Trade Organization (WTO) report involving Indonesian measures affecting the automobile industry, United States Trade Representative Charlene Barshefsky issued the following comments:

“The draft dispute settlement panel report supports the United States challenge to various Indonesian measures that hinder market access for U.S. automotive products,” Ambassador Barshefsky said. Under its 1993 Program and its National Car Program, Indonesia provides tariff and tax incentives to producers of motor vehicles and motor vehicle parts that purchase specified amounts of Indonesian-made parts. The panel found that Indonesian practices violate WTO rules.

Ambassador Barshefsky added, “The panel’s ruling ensures that Indonesia will be required to cease its discrimination against imported autos and auto parts. Compliance with this decision requires that Indonesia open its market to meet its WTO obligations. The IMF reforms address some market access barriers illuminated in this case, we felt that it was important to address specific concerns through the WTO process.”

In reaching its conclusions, the panel affirmed some central and well-established principles underlying the GATT and the WTO. The panel made clear that WTO members may not discriminate against imported inputs by conditioning the receipt of subsidies to producers of finished products on the use of domestically-made inputs. “This aspect of the panel’s ruling, in particular, should serve as an important precedent in dealing with barriers to trade in automotive products around the world,” said Ambassador Barshefsky.

Similarly, the panel reaffirmed that where a member grants an advantage to imports from one member, the importing member must, pursuant to the MFN principle, grant the same advantage to imports from all members.

In conclusion, Ambassador Barshefsky noted, “the panel’s ruling complements the agreement reached between Indonesia and the IMF regarding the elimination of the measures in question. While the Indonesia-IMF agreement reflects the fact that reform of these measures will contribute to the stabilization and recovery of the Indonesian economy, the panel ruling recognizes that the measures also are inconsistent with WTO rules and should be brought into conformity with those rules.”

## **Background**

In 1993, Indonesia established rules linking local content to preferential tariff and luxury tax rates for cars sold in Indonesia. Under the February 1996 National Car Program, this regime was expanded to permit companies designated as "pioneer firms" to import auto parts tariff-free, and to sell “national cars” luxury tax-free, for three years. To qualify as a pioneer firm, a company must be 100 percent Indonesian-owned, use a unique Indonesian trademark, be developed with national technology, and reach 60 percent local content within three years. One firm was designated as a pioneer company, *PT Timor Nasional*. However, the “national car” actually was to be produced by a joint venture, in which a Korean company, Kia Motors, has a 35 percent equity interest. On June 4, 1996, President Suharto amended the National Car Program by issuing a decree providing that “national cars” produced abroad could be imported duty-free into Indonesia, and could be sold luxury tax-free. PT Timor was authorized to import up to 45,000 cars from Korea, and in September 1996, Kia began exporting cars to Indonesia.

In October 1996, the United States and the European Union (EU) initiated WTO dispute settlement procedures on Indonesia's 1993 and National Car programs. At the same time, Japan initiated WTO dispute settlement procedures on the National Car Program only. The United States asserted that the 1993 and National Car programs are inconsistent with Indonesia's obligations under the GATT 1994 and the WTO Subsidies and Countervailing Measures (SCM) and TRIMs agreements. In addition, the United States alleged that the National Car Program violated the WTO TRIPS Agreement and caused serious prejudice to U.S. interests within the meaning of the SCM Agreement. All concerned parties held consultations with Indonesia in the last quarter of 1996. Between January and June 1997, the United States and Indonesia held informal discussions in an effort to craft a settlement aimed at WTO compliance and greater U.S. access to the Indonesian market. Although much progress was made in these talks, final agreement was not reached on all elements of a settlement package.

On April 17, 1997, Japan requested the establishment of a panel to examine its complaints against Indonesia. On May 12, 1997, the EU also requested establishment of a panel. On June 12, a panel was established in response to Japanese and EU requests. On the same day, the United States requested a panel in order to preserve its rights, while stating an interest in continuing consultations aimed at a mutually satisfactory settlement with Indonesia. On July 30, a panel was formed in response to the U.S. request and consolidated with the Japan/EU panel. The panelists are Maamoun Abdel-Fattah (Chair, Egypt), David Walker (New Zealand), and Ole Lundby (Norway). Negotiations toward a settlement continued intermittently on an informal basis.

The WTO panel held its first meeting on December 3-4, 1997 and its second meeting on January

13-15, 1998. In the meantime, in response to the Indonesian financial crisis during the Fall of 1997, the IMF negotiated on October 31, 1997 a Memorandum on Economic and Financial Policies (MEFP) involving a stand-by credit of \$10.14 billion to be disbursed over the next three years in support of Indonesia's macroeconomic stabilization and structural reform program. In response to worsening Indonesian conditions at the end of 1997, the IMF negotiated the January 15, 1998 Letter of Intent and MEFP that supplements and revises the October 31 conditions while reconfirming the above disbursement. The IMF October 1997 funding was also supported by technical assistance and substantial financing totaling \$8 billion from the IBRD and Asian Development Bank (ADB), particularly in financial sector rehabilitation and structural reform.

The January 15, 1998 MEFP provides for the immediate elimination of special tax, customs or credit privileges granted to the "National Car" project; implementation ahead of schedule of the WTO panel ruling on the project; and the elimination by 2000 of tariff preferences tied to local content levels.

An interim, draft report was issued to the disputing parties on March 24. The United States, as well as the other parties, has until April 7 to submit comments on the interim report. If requested, the panel will hold a meeting to discuss the parties' comments on the interim report, although the date of any such meeting has not yet been scheduled.

A final report is scheduled to be released to the disputing parties by the end of April, and to be circulated to all WTO Members in mid-May. Any party may appeal the legal findings of the panel by referring the matter to the WTO Appellate Body. The appeal process generally takes about six months from the date on which the panel report is circulated.

The U.S. submissions to the panel described in detail the nature of Indonesia's WTO violations and the harm caused to U.S. automobile manufacturers by the subsidies provided under the National Car Program.